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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Improving Commission Processes) PP Docket No. 96-17

To: The Commission

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COMMENTS OF
THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

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March 15, 1996

No. of Copies rec'd at 4
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Executive Summary

The American Radio Relay league, Inc. submits these Comments solely to address the Commission's processes and regulatory approach to the Amateur Radio Services.

In recent years the Commission has been completely ineffective in the area of enforcement. However, the work of volunteer monitors in the amateur service is a resource that the Commission could build upon.

Since 1983 there has been virtually no enforcement actions taken by the FCC in the Amateur Service. The Commission cannot delegate its enforcement obligations since it involves fundamental issues of personal safety, personal liability and due process of law.

The Commission should require manufacturers of numerous consumer electronic devices to provide interference resolution information notices to be affixed to their devices.

In order to reduce Commission administrative burdens, the Commission should take immediate and positive action on the Petition for Rulemaking (RM-8677) recently submitted by The American Radio Relay League, Inc. to implement the Inter-American Convention on an International Amateur Radio Permit and reduce the administrative burden of issuing reciprocal operating permits to amateurs visiting from other countries.

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The American Radio Relay League, Incorporated (the League), the national association of amateur radio operators, by counsel and pursuant to Section 1.405 of the Commission's Rules (47 C.F.R. §1.405), hereby respectfully submits its comments in response to the Commission's Notice of Inquiry, FCC 96-50, ____ Fed. Reg. ____, released February 14, 1996 (the NOI). This NOI asks, in the context of reform of Commission structure and approach to issues, how the Commission might improve speed and quality of service to the public, reduce the burden of unnecessary regulation, and use its financial and staff resources more efficiently. The League's comments address the Commission's processes and regulatory approach to the Amateur Radio Services specifically. For its comments, the League states as follows:

I. Introduction

1. Superficially, it is difficult to spot areas in which the Commission can more efficiently regulate the Amateur Service, simply because, at the present time, it does very little regulation

of the Amateur Service. Nor do amateurs require significant regulation. Indeed, regulation is antithetical to the largely experimental character of the Service, and to the flexibility of the service in terms of response to and preparation for disaster and emergency communications. Regulation of amateur radio is, further, contrary to all of the traditions of the Amateur Service. In the Conference Report to the Communications Amendments Act of 1982, Public Law 97-259, Congress noted¹ that the Amateur Service is the most self-regulated of all of the Commission's charges:

The Amateur Radio Service has been praised for being self-regulated. The Commission has reported that less time has been devoted to monitoring and regulating the Amateur Service than any other service because of its self-policing and discipline. One primary purpose of the Conference Substitute is to provide the Federal Communications Commission with the authority to implement various programs which will result in improvements in administration of the Amateur Radio Service and to cut the costs thereof. It will further allow the Amateur Radio Service to continue its tradition as the most self-regulated radio service in the United States, and to become to some extent self-administered, requiring even less expenditure to government time and effort than in the past.

2. In the intervening fourteen years since this legislation was passed, the Amateur Service has indeed distinguished itself, serving as a model in the area of licensing and examination administration. Now, basic qualifications for amateur radio licensing are determined by examinations administered and coordinated entirely in the private sector by volunteers. The examinations themselves are prepared by volunteers, from pools of questions created by groups of volunteers who agree on their

¹ H.R. Report No. 765, 97th Cong., 2nd Sess. 33 (1982); 1982 U.S. Code Cong. & Admin. News, at 2263.

contents, and based upon syllabi that are used as a framework for the examinations, also prepared and agreed upon by volunteers. The data for the applications for new and upgraded licenses is keyed into computers by volunteers and submitted to the Commission in electronic form.² The only involvement of the Commission in the entire process is the electronic reception of license data; database maintenance; the automatic printing and mailing of licenses; and the assignment of call letters.

3. The unqualified success of the volunteer examination program in the Amateur Service stands in stark contrast to the failure of the Commission to support or make use of the work of volunteers in monitoring amateur radio bands for rule violations. Volunteers assist the Commission by conducting all routine self-policing, and evidence gathering in difficult compliance cases through volunteer effort. Notwithstanding this assistance, the Commission has devoted essentially no time to enforcement in the Amateur Service in the past three years. While the Service requires little enforcement effort, and the information and evidence gathering can be and is conducted purely by volunteers, Commission intervention, in a few cases per year, using the data gathered by volunteers is necessary in order to maintain any sense of deterrence. Licensees must believe that there is some enforcement authority, and they must periodically see evidence of

² At paragraph 13 of the NOI, the Commission notes that the success of electronic filing of applications in the Amateur Service is the catalyst for expansion of the process for all wireless services.

the presence of meaningful enforcement, in order that the level of compliance that has been a benchmark of the Service in the past is maintained. In recent years, and especially in the past three years, the Commission, and especially its Compliance and Information Bureau, has been completely ineffective in this respect. The current perception in the Amateur Service is that there is no Commission presence whatsoever, and instances of intentional rule violation are increasing substantially as the direct result of that perception. The work of radio amateurs who volunteer thousands of hours of time monitoring these violations, conduct sophisticated direction-finding to identify the rule violators, and prepare transcripts for the CIB offices (all pursuant to a written agreement between the League and the CIB, which has been observed only by the League) has all gone for naught, and the volunteers are understandably and justifiably demoralized. This is a shameful waste of volunteer resources, and an opportunity provided by Congress that the Commission has allowed to slip by. It is, however, a resource that could be resurrected and improved using few Commission staff resources.

II. Statutory and Regulatory Enforcement Reform Is Critical and Urgent In The Amateur Services

4. There is a lot more that should, and can easily be done by the CIB and Wireless Bureau staff (even given the limitations in Commission staff and budget) to re-create the sense of deterrence that once existed in the Amateur Services. Repeatedly, the League has received assurances from the CIB staff at all levels that the

most visible, current malicious interference problems would be resolved. Those promises, however, have gone unfulfilled, for no good reason other than neglect of the problems in favor of other tasks. Only excuses have been offered. While the League believes that the service provided by the CIB in the area of enforcement in the Amateur Service is the worst example of the Commission's services to the public, there are some statutory and regulatory reforms that can be implemented that, along with some self-examination on the part of the Commission's CIB, should vastly improve the situation.

5. The Amateur Radio Service is the most rule-compliant of all the radio services administered by the FCC. There are approximately 650,000 radio amateurs currently licensed by the Commission. The Service is rule compliant principally because of the shared avocational interest of its licensees in radio and because of the shared traditions of this radio service. Another reason for the high level of compliance in the past is the occasional enforcement action initiated by the FCC in egregious cases. Those actions, widely publicized, created a sense of deterrence to would-be rule violators.

6. In recent years, the Commission has been viewed as a "paper tiger" in rule enforcement matters. It has failed to act in even the most egregious rule violation cases in the Amateur Service. The most visible, and the most serious type of amateur rule violation is malicious interference, which, when perpetrated, disrupts large numbers of law-abiding amateur radio operators and their ongoing public service communications. Malicious

interference is perpetrated by a very few individuals, but if it goes unaddressed for long, it is a problem that tends to spread and continue. Conversely, if the Commission addresses an instance without delay, the problem tends to disappear and not recur in the same area.

7. Because CIB promises to address these occasional problems have gone unfulfilled, cases of malicious interference, though still very occasional throughout the United States, are on the increase. This increase is the direct result of the absence of any sense of deterrence. Since 1983, there have been virtually no enforcement actions taken by FCC in the Amateur Service. Many children who are both amateur radio licensees and who are served by amateur radio, in those areas where malicious interference exists, are subjected to obscenity and indecency, all in a deliberate effort to jam ongoing rule compliant amateur communications.

8. The Commission's intention, of course, is not to ignore the Amateur Service, but its ability to enforce its rules is limited by budget factors, and by the fact that invocation of remedies currently available under the Communications Act necessitate a significant expenditure of FCC staff time and money. These include license revocations under Section 312 of the Communications Act of 1934 (which require prior notice and a full administrative hearing, and attendant administrative and judicial appeals procedures); license suspensions under Section 303 of the Act (which presently require prior written notice and an opportunity for a full hearing, during which time the suspension order remains ineffective); cease and desist orders under Section

312(b) of the Act (which also involve a hearing, in which the burden of proceeding and of proof is on the Commission); and monetary forfeitures under Section 504 of the Act, which are interminably appealable administratively, and which the Commission has no power itself to collect (and which are routinely not paid as the result). These are indeed cumbersome enforcement processes, and each requires a fair amount of attention from Commission staff in order to address a specific problem.

9. The League has fully expected that the Commission will devote the necessary enforcement attention to the Amateur Service, notwithstanding the cumbersome nature of the array of remedies available administratively to the Commission; the financial limitations, and the recent staff downsizing. The League is disappointed at the failure to provide even minimal enforcement, because 1) very little is required of the Commission in order to retain the requisite sense of deterrence nationwide in a very large radio service; 2) amateurs have been and are willing to do their part in both routine self-policing and evidence gathering in egregious cases, and have performed in this respect admirably; and 3) amateurs have no individual enforcement jurisdiction whatsoever and there is no substitute for Commission action in certain types of compliance cases. Amateurs have good working relationships with most engineers-in-charge at the various field offices around the country, who are willing to assist directly in Amateur Radio enforcement problems, but for the instructions they have received from the CIB staff in Washington not to address any amateur enforcement problem absent specific instructions from Washington to

do so. The League has an Official Observer program in place, with dedicated volunteers, but its work-product, once submitted, has been ignored, and implicitly rejected by the Commission as a basis for any enforcement action, and the program is essentially non-functional at the present time as the result.

10. The Commission, as a practical matter, cannot delegate enforcement. It must retain that obligation as a primary function of a Federal agency. It is the principal remaining regulatory obligation of the Commission after the deregulation of the Amateur Service is complete. Enforcement involves fundamental issues of personal safety, personal liability, and due process of law which are not easily delegated to the private sector. Once the rules are reduced to the bare essentials, the remainder (for example, the obligation not to maliciously interfere with the communications of another) must be enforced by an entity with the authority to do so. The proper role of the Commission is to enforce those rules, and it should do so vigorously, in the Amateur Services no less than in other services.

11. One significant reform could assist the Commission in this respect. The Commission needs the statutory authority to summarily and immediately suspend amateur licenses upon receipt of information sufficient to cause the Commission to believe that a licensee in the Amateur Service has violated a fundamental rule or section of the Act governing the Amateur Service, for periods up to six months. It should also, for the same maximum period, be able to immediately modify an amateur operator or station license, so as to preclude operation on the frequency bands, or at the times,

during which the observed rule violations have occurred. In either case, the summary suspension or modification would not extend beyond six months per incident, after which the Commission would have to afford the licensee the full panoply of due process entitlements that licensees in other services are afforded under the current statutory provisions in order to continue suspension or invoke other remedies. Such statutory reform would permit the Commission to address malicious interference and other serious rule violations in the Amateur Service without delay and expense, which would in turn reduce the incidents of such rule violations, and restore the sense of deterrence that has been a cornerstone of the tradition of rule compliance in this radio service. The provision would also encourage the Commission to utilize the evidentiary material gathered by volunteers in support of a determination by the Commission that a particular licensee has engaged in serious rule violations. The largest benefit, however, is that it would permit an immediate, swift response to a serious problem. If necessary, the short-term suspension could be followed up with a longer term solution, though it is believed that such would not, in most cases, be necessary.

12. This proposed statutory reform is especially suitable to the Amateur Service, which is not part of the operation of anyone's business, and which is conducted purely on an avocational basis. It is, however, a radio service that is often critical in emergencies and in disaster relief, and amateur communications should be protected against serious rule violations such as

malicious interference which severely disrupts communications, potentially over wide areas or regions.

III. Interference to Home Electronic Equipment

13. Paragraph 37 of the NOI discusses the Commission's effort to privatize interference complaint handling involving consumer electronics. It is astounding that, after so many years, the Commission continues to focus on the symptom, rather than the cause, of the problem. The problem is in two parts: 1) the susceptibility of the consumer device to normally encountered levels of RF energy; and 2) the perception and expectation of the consumer of an electronic device that the product that they have purchased will not be interference susceptible. The Commission has, since 1982, had authority to address, by a profusion of options, the root cause of interference complaints. It has consistently refused to exercise that jurisdiction. The League suggests that the Commission would save itself, its licensees, and innocent consumers of RF-susceptible consumer electronic devices a tremendous amount of difficulty by simply exercising its heretofore latent jurisdiction by requiring notices on the products and requiring manufacturers to provide interference resolution information and a contact representative for RFI resolution, just as computer manufacturers do in case of purchaser difficulty. It is the manufacturer which constructs the devices without RF rejection characteristics. It is therefore the manufacturer who most properly should be required to address it. The creation of a

private-sector interference resolution process not involving the manufacturer is both misdirected and ultimately an unsatisfactory remedy. The manufacturer of the offended product is a necessary party.

14. The League does not share the Commission's optimism that a privatized interference resolution program as configured in the Tampa project will "provide consumer electronic users with better service" except in the sense that a complaint addressed to the Commission's field offices from a consumer of electronic equipment presently goes unaddressed. The fundamental flaw in this privatization proposal of CIB is that the victim of interference to home electronic equipment is expected to pay for the private interference resolution service. All the consumer did was purchase an RF-susceptible device. A consumer in such a position, having to pay to resolve such a problem, may well be expected to be compensated by the operator of the transmitter that is the catalyst of the interference. This will, therefore, escalate the dispute between the consumer and the transmitter operator. It is a misdirected plan *ab initio*.

15. Nonetheless, if the Commission intends to persist in placing band-aids on broken limbs, it should focus its attention on groups of amateurs who are willing, in almost any area of the country, to assist voluntarily in interference resolution, without compensation. Provided that there is a sufficient statutory basis for acceptance of such volunteer service, radio amateurs would be willing to utilize their skills to undertake interference resolution assignments involving other radio services. What such

volunteers would require, however, and what all volunteers in the Amateur Service need more than anything in providing volunteer services, is some statutory protection from civil liability, as long as their volunteer service to the Commission is performed in good faith and is not grossly negligent. The public service orientation of radio amateurs allows for significant expansion of the volunteer services that amateurs are willing to provide to the Commission. That willingness to help, however, is regularly tested in volunteer programs by the exposure of volunteers to potential liability to others. This can be simply addressed by various statutory changes, similar to those which have recently been enacted for participants in the Coast Guard Auxiliary.

IV. Reduction of Administrative Burden

16. The Commission could greatly reduce the administrative burden of issuing reciprocal operating permits to amateurs visiting from other countries. On July 19 1995, the League submitted a Petition for Rule Making, RM-8677, requesting that the Commission implement the Inter-American Convention on an International Amateur Radio Permit (IARP). Under the Convention, administrations may delegate to the member-society of the International Amateur Radio Union the function of issuing IARPs to its citizens. Potentially, the IARP could eliminate the burden of processing applications for reciprocal operating permits submitted by visiting amateurs from countries throughout the hemisphere.

17. Equally significant is the opportunity to eliminate the processing of applications from most European amateurs. The

European Conference of Postal and Telecommunications Administrations (CEPT) invites non-member administrations to participate in its Recommendation T/R 61-01 arrangements. Under T/R 61-01, an administration can issue a "CEPT radio amateur license" that will be recognized by other participating administrations as valid for temporary stays. The "CEPT radio amateur license" can be an integral part of the normal license issued by an administration, eliminating additional paperwork. Participation by the United States in the CEPT arrangement thus would benefit not only its citizens and the FCC, but the US tourism industry in general by encouraging more visitation to our shores. For more than four years, the ARRL has been working with the FCC and the Department of State to add the US as a participant in T/R 61-01. Frankly, we are very disappointed at the slow pace of progress in achieving this relatively straightforward and modest objective, and we wish to take this opportunity to urge the Commission to bring the matter to closure at the earliest possible date.

V. Summary and Conclusions

18. The Commission's NOI signals to the League an intention to reduce the Commission's functions, as much as possible, to the role of auditor and mediator, rather than regulator. This is a potentially positive trend for the Amateur Service, which is an appropriate model for regulatory reform, due to the non-volatile and non-pecuniary nature of the Service. The Commission's experience with amateur examinations and electronic filing of

applications can point the way to similar reforms in other services.

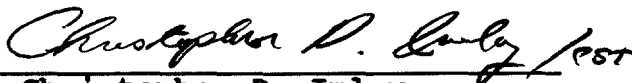
19. The primary Commission function relative to amateur radio which cannot be successfully privatized is the enforcement function, which should be improved significantly. A small investment in enforcement effort goes a long way in the Amateur Service, and the past failures of the Commission can be rather simply and quickly remedied. Some statutory and regulatory changes can be implemented which will streamline the enforcement process, and will quickly reinstate the sense of deterrence that is one of the cornerstones of self-regulation in the Amateur Service.

Therefore, the American Radio Relay League, Incorporated respectfully requests that the Commission proceed with the steps outlined herein, which will improve the Commissions' service to the Amateur Radio Services, and which will provide some needed reforms for the direct benefit of the Amateur Services at the same time.

Respectfully submitted,

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